

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on January 22, 2003 at 3:10 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Dan Harrington (D)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 95, 1/15/2003
Executive Action:

HEARING ON SB 95

Sponsor: SEN. EMILY STONINGTON, SD 15, Bozeman

Proponents: Shirley Brown, Department of Public Health & Human Services (DPHHS)
Beth Satre, MT Coalition Against Domestic Violence & Sexual Assault
Twila Costigan, MSF, APA
Kathy Deserly, Helena

Informational Testimony: Mike Halligan, Missoula

Opponents: None.

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, said SB 95 was requested by DPHHS to clarify and clean up language. She said child abuse and neglect statutes are very difficult and have been amended significantly in the last three legislatures. In 1997, the statute was amended to provide the permanency plan hearings and to establish time limits on both temporary and investigative authority and legal custody. In 1999, the legislature amended the child abuse of Montana to comply with the Federal Adoption Safe Families Act (FASFA) of 1997. The 2001, legislature passed legislation with reorganized and clarified legal procedure in filing child abuse and neglect petitions. It also shortened the time frames for show cause hearings and codified time frames for judication and disposition of cases to maintain compliance with the FASFA. What the division is really after is, to ensure children a safe, stable, and permanent family; to ensure foster care placement is temporary and to require parents to accept responsibility for their actions and for the protection for their children. The 2003 legislature has the opportunity to build on the foundation in keeping with FASFA. The department is now offering amendments to improve on areas that work for children and families and eliminate changes that have proven difficult, if impossible to carry out and practice. All these changes, SEN. STONINGTON stated, was within federal guidelines.

Proponents' Testimony:

Shirley Brown, DPHHS, Administrator for Child and Family Services Division, handed out three items. One was a copy of an article in the Helena Independent Record, dated 1-22-2003 **EXHIBIT (phs13a01)**. The second was a copy of a section by section analysis of SB 95

EXHIBIT (phs13a02). The third was a copy of **Ms. Brown's** testimony, which includes an outline on the last page, what sections she would go over with the committee members **EXHIBIT (phs13a03)**. This last page correlated with exhibit 2.

{Tape: 1; Side: A}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 11.1}

Kathy Deserly, National Indian Child Welfare Association (ICWA), stated her support for SB 95. She informed the committee that before working for the National Indian Child Welfare Association, she worked for Child and Family Services Division (CFSB), from 1996 - 2000, as a staff person identified to work on Indian child welfare issues. She pointed areas of the bill that are important to Indian families because when she worked for CFSB, 30% of the children in the system were Indian. **Ms. Deserly** said there were several references throughout the bill that address the exceptions to ICWA. She pointed out one reference to placing a child with a family member or relative. This is especially good for Indian children, when able to look at a non custodial parent as an option, as well as relatives. The court may refer to relatives, when there is the elimination of the pre and post placement evaluation, where a child is placed by their parent with an adoptive extended family member. This eliminates some legalities in the system. **Ms. Deserly** also addressed the section amending the disclosure of records for adoption. She thought this critical. When she worked for the division, she had many adult adoptee s' come to her and say they were adopted as a child and know they are Indian, but do not know what tribe they belong to. It was not so much to see if they had money coming to them, as it was to get a sense of who they are. The Indian Child Welfare Act outlines within law that adoptees' have that right. She added that non-Indian adoptive parents would call her for information for their child who was turning 18, knowing the child was a member of a tribe. They wanted their child to have education benefits that might be coming to them. She said it was good to have in policy, to help those families get those records. The last thing **Ms. Deserly** pointed out the language surrounding kinship care providers. This is an area impacting Native American families and can only serve to improve the state's compliance with ICWA. She felt very positive about SB 95 and encouraged support for the bill.

Twila Costigan, Montana State Foster Adoptive Parent Association, supported SB 95. She stated concern for parents who need help for their children but are not able to access it. It comes back to funding Medicaid so parents can get help for their children. The second thing she pointed out her support for, found on page 21, line 25, was adding the ability to use hearsay evidence made

by the youth in the adjudicated hearing. She thought this to be a positive move on the division's part.

{Tape: 1; Side: B; Approx. Time Counter: 11.2 - 16.7}

Beth Satre, MT Coalition Against Domestic Violence & Sexual Assault, wanted to stand up and say the coalition supports the efforts of the department to clarify the pieces of statute in SB 95 that make the children in Montana more safe.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. DUANE GRIMES told **Ms. Brown** her explanation of a bill was one of the best he had ever heard. He said his first concern was on page three, stating how this would take the professionals out of the loop when the alleged abuse has occurred in a daycare. The way he understood it, the department would be using the licensing people to make the judgment call and then it would go to law enforcement. He did not think them as skilled as CFSD were in separating fact from fiction and correctly weighing the emotional issues. **SEN. GRIMES** said he was very concerned about that and understood the financial and time consuming pressures, and wanted to know if **Ms. Brown** had anything to ease his concerns. He thought there should be skilled people in there that would be her subordinates. **Ms. Brown** said she probably could not convince him it was a good thing. What she could try to do is ease his mind a little bit.

{Tape: 1; Side: B}

Ms. Brown continued to answer **SEN. GRIMES** question by saying licensing services handles the situation and law enforcement assists. If someone called with an issue in child care, she thought the way it worked is that they would be told it is a licensing issue then it would be referred to the licensing people to do the investigation on what possible mal-treatment or allegations. If it then becomes a law enforcement issue, then CFSD could be called to assist law enforcement in the investigation. She said either licensing or law enforcement could call them and ask for assistance.

SEN. GRIMES asked **SEN. BRENT CROMLEY** if he was going to ask some questions about the hearsay issue. **SEN. CROMLEY** said he was not, but would be willing to respond to any questions **SEN. GRIMES** might have.

SEN. GRIMES asked about the adoption issue for Native Americans, and their need for information. He said he understood the need for that. He said a few years ago there was a bill to redo the adoption, which was incredibly sensitive. There were so many people who attended the hearing, including parents who gave their child up, who do not want contact. This bill says the information will be released. He asked **Ms. Brown** if this issue has been dealt with on a public level yet and she said not really. The genesis of this has been worked on over the years with Bureau of Indian Affairs. They have a lot of information and want those placed through the adoption agencies to have it. On the other side, are the adult adoptees, whom several calls have been received from who are wanting information. There are also the ones turning 18 wanting information, who know they are from a tribe, but do not know which one. **Ms. Brown** said the division wanted to find what was in the best interest of both the adoptee and the parent who gave the child up. If it has been a recent adoption, or had taken place in the last ten years, the trend has been more open. She thought there were a lot of parents who relinquish children who come back for information also.

SEN. GRIMES asked if it were possible to give out the tribe and the percentage without the actual birth certificate and the names of the birth parents. **Ms. Brown** did not think so, but referred the question to **Kathy Deserly**.

SEN. SCHMIDT asked if **Mr. Halligan** would comment.

Informational Testimony:

Mike Halligan, Self, referred to page eight regarding the provisions in the bill on appeal and he thought they were particularly good. In many cases where there might be an appeal from a district court case, information was not known up to two years. The child was in hiatus, while the appeal is going on. This allows a district court judge to be able to deal with that issue while it is on appeal. Whether the child goes back to a parent or stays in foster care, at least there is stability in this instance. **Mr. Halligan** said if it is going to take up to two years, it gives parties an opportunity to talk with the judge about other forms of treatment plans or conditional issues that need to be addressed. The judge may want to hold hearings that can be worked on during that time. This part is a proactive provision for parents as much as it is for children because it gives them the opportunity to continue to work on it. The opportunity for parents is in the providing for informal parental agreements on page 12, lines 11 and 12. This gives the department the chance to square things away in a home without having to go

to court. He also thought page 23, line 30, stating the order to place the child with the non-custodial parent, superceding any existing custodial order, was good. It maintains some sense of stability for the child.

SEN. TRUDI SCHMIDT thought page 35, line 21 "the department may release a copy of the adoptee's original birth certificate..." sounded permissive using the word "may." She wanted to know if there were reasons for not automatically turning it over. **Ms. Brown** said the word "may" is discretionary. The request would come through the department, someone in the department would then take a look at the documents. If there was a clear sign that the records should not be released, the department would then advise them to go through the normal process.

SEN. SCHMIDT wanted to know if the searching process is still the same throughout the department. **Ms. Brown** said yes.

SEN. ROBERT DEPRATU wanted to know what criteria was needed in order to release information and did it identify the parents. **Ms. Brown** said if it were medical information they needed that does not identify the parents, the information can be released. The department can release non-identifying information. What cannot be released was any information that would lead to the identity of the parents.

SEN. CROMLEY needed clarification on page 3, line 23, regarding voluntary surrender of a child to the department. **Ms. Brown** explained that abandonment has become more of an issue since the reduction in the mental health coverage. There had been cases where a parent has come to the department and wanted to relinquish their child. Line 23 is aimed specifically at those parents who relinquish their child and no abuse or neglect is involved. It is a way some parents have gotten access to services because the child then becomes a ward of the state and services must be rendered. She said it is a funding issue. The department has to thoroughly investigate and determine if the parents are giving up the child to access services for their child. If that is the case, the services will not be available to them.

SEN. CROMLEY was concerned about adequate additional investigation of the non-custodial parent as to whether the parent was fit or had been already declared unfit. **Ms. Brown** said by the time the department gets to the dispositional hearing, the child will have been cared for at least a month or two. The departmental policy when the social worker was investigating whether the non-custodial parent was a viable placement option for the child, was the department does a CPS

background check, asking information about the parent. CFSD also requests a copy of the dissolution decree to see what the status was and if there was information that would say whether the parent was a good option or not.

SEN. JOHN ESP had a question on page 14 regarding the petition to sever the parent-child legal relationship. He wanted to know what other types of petitions would not be personally served

Ms. Brown said the department generally start with a petition for emergency protective services combined with either a petition for a temporary investigative authority or temporary legal custody. It depends on the facts of the case. The first petition would be personally served and then a follow-up petition. If an emergency protective services and a temporary investigative authority are started for temporary legal custody, it would not be personally served. If the process started with a petition for emergency protective services and temporary legal custody, and the department had to be involved at the end of the six-month period it is a petition for extension of temporary legal custody or it is a motion. If a petition to extend temporary legal custody was filed, it would have to be served by mail. If the CFSD had to stay involved in the case, then a petition would have to be filed for termination. The petition to terminate parental rights would be personally served.

SEN. ESP asked why page 21, line 25 may be controversial. **Ms. Brown** said some people believed that hearsay evidence should not be allowed in court.

SEN. ESP asked if the controversial part of that, changes the admission of hearsay statements other than those allowed according the Montana Rules of Evidence. **Ms. Brown** said in the rules of evidence there is hearsay exceptions and hearsay exclusions. There is a whole list of circumstances being argued about what someone else has said getting into court. The allowing of hearsay evidence states the child 's statements may not fit in one of those exclusions or exceptions to the hearsay rule and still be admissible.

{Tape: 2; Side: A}

SEN. ESP asked what examples were there when the child is left in the home. **Ms. Brown** said a circumstance could be when there was abuse and it was serious enough that the social worker and the county attorney determined getting a petition for temporary legal custody was necessary. However, the parents were willing to work with the department and services were available to provide in the home. She said that type of situation did not come up often. There had been three instances in the last few years, where the

social worker's recommendation was temporary legal custody, but leave the child in the home with a lot of monitoring and services. The judge says no, that cannot be done because the child has to be removed from the home with a petition for temporary legal custody.

SEN. ESP asked if there was another process to substitute the repealer in section 34, page 43. **Ms. Brown** said the requirement for a hearing 180 days after termination is an old federal requirement. The requirement for a permanency plan hearing has been in statute since 1997. The federal requirement for a permanency plan hearing replaces the federal requirement for a review hearing after 180 days. If the child had been in care for 12 months since the court said the child was abused and neglected, or 12 months after the first sixty days in care, the permanency plan hearing has to be held. The child can be in care a year to 14 months. Then a permanency plan hearing must be held every 12 months there after until the child is in permanent placement. The timing could be such that the review is not done following termination, and it is not combined, then four months later there is a permanency plan hearing. The permanency plan hearing is the current requirement that replaced the review hearing after 180 days.

SEN. HARRINGTON asked **Ms. Brown** what her experience was with judges in a situation regarding page 18, line 27. He thought judges chose to do virtually what they want. **Ms. Brown** said the line gave more options than before.

SEN. ESP asked **Roy Kemp, Quality Assurance Division, DPPHS**, what his capabilities were in investigating abuse in daycare facilities. **Mr. Kemp** said the licensing regulations which form minimum requirements are facility focused. His authority and enforcement relate to the license. In other words, can the daycare operate and meet the requirements. Statutorily, he is not able to interview children without their parents. That kind of thing could be hampering, as it relates to a CPS person. The actions **Mr. Kemp** could take would be against the facility license and not against any person. If a person is accused of abuse and neglect, his recourse would be to refer to the police in the criminal matter as opposed to administrative matter. He cannot take action against a license because of a matter that might fall into abuse and neglect. It would have to relate to lack of supervision by the owner, or staff specifically. That is a licensing violation and he can take licensing action to correct it.

SEN. O'NEIL asked what investigation could be done if the provider of the daycare were doing something, could **Mr. Kemp**

investigate adequately. **Mr. Kemp** said only through the license and the licensing requirements.

SEN. EMILY STONINGTON asked if it were a criminal matter, would **Mr. Kemp** be required to report a situation. **Mr. Kemp** said yes.

Closing by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, thanked everyone who contributed to such complicated statutes and for their concern.

ADJOURNMENT

Adjournment: 4:50 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs13aad)